

# MORGANTOWN BOARD OF ZONING APPEALS

## MINUTES

October 19, 2005

6:30 P.M.

City Council Chambers

**Members Present:** Kevin Leyden, Nick Iannone, Jim Rockis, Bernie Bossio, and Mark Furfari.

**Members Absent:** None.

**Staff Present:** Jim Wood, Planning Director.

### MATTERS OF BUSINESS:

Motion by N. Iannone, second by B. Bossio to approve the minutes of September 21, 2005, with the addition to page 5 of “will comprise more than”. Motion carried unanimously.

### OLD BUSINESS:

1. **CU05-12 / Panico / 98 South Walnut Street:** Request by Joe Panico for conditional use approval for a multi-family structure in the B-4 District at 98 South Walnut Street. Tax Map #29, Parcel #348; a B-4, General Business District. (The applicant had requested that the case be tabled to the October meeting.)

J. Wood read the staff report stating that Joe Panico has made application for conditional use approval to construct an additional floor onto the existing structure at 98 South Walnut Street. In 1992, the Board of Zoning Appeals approved Mr. Panico’s conditional use request to convert the structure into a 6-unit apartment building. At that time, the Board required eleven parking spaces to be provided on site. The addition would add one three-bedroom and two one-bedroom apartments, requiring four additional parking spaces.

J. Wood clarified that the Design Review Committee, on July 27, 2005, voted to forward a recommendation of approval to the Planning Commission concerning the façade of the addition. The applicant agreed to the conditions set forth. They are: install sills and trim around the windows on the 2<sup>nd</sup> and 3<sup>rd</sup> floors to be similar to that on the ground floor, on all sides, with top keystones to be similar to the first floor windows; install band/cornice on top of the roof to mimic the bands between each floor on three sides; T-111 siding on east side be replaced with Drivit®; T-111 siding on on second and third floors on parking lot side of building.

J. Wood reported that, after conducting a site visit with the City Engineer, it was determined that the applicant could provide 19 spaces with appropriate clearing of vegetation in some places. The applicant has indicated three parallel spaces adjacent to the building. This area is only sized adequately for two, 7’ X 22’, spaces. The City Engineer also specified that the lot should not be paved due to the potential for runoff problems into Decker’s Creek, however, each space must have wheel stops and 4” X 4” landscape timbers anchored to the ground with long steel pins to delineate the spaces. It was also determined that the row of spaces marked I-5 should be realigned to provide an easier turning movement into them.

J. Wood stated that staff recommends approval with the following conditions:

1. The applicant bring the existing parking area to city requirements by:
  - a. Providing at least 15 parking spaces, at least 8.5' X 18' each.
  - b. The surface must comply with the City Engineer's specifications.
  - c. Parking stalls must be delineated with wheel stops and landscape timbers anchored into the ground.
  - d. Consult and adhere to all requirements by the Morgantown Utility Board for storm water management.
2. Structure to have no more than nine residential units, with bedroom mix approved.
3. Adherence to the agreements made for façade design with the Design review Committee.
4. Applicant provides an updated, accurate site plan with a 1:20 scale due to some problems with inaccuracies regarding the building size.
5. A building permit for the addition not be issued until the parking lot design is modified according to city specifications, and the spaces completed and found acceptable by the City Planner.

Joe Panico, applicant, spoke about parking spaces under the proposed zoning ordinance and that the building will be upgraded, inside and out.

K. Leyden asked how you add another floor.

Mr. Panico responded that it has a shed roof; you build another floor and another shed roof.

K. Leyden questioned problems with getting in and out of the parking lot in the winter.

Mr. Panico replied that all the City's specifications will be met.

K. Leyden asked for public comments. There being none, the public portion was closed.

B. Bossio asked for clarification of the parking under the proposed zoning ordinance.

J. Wood replied that B-4 Districts are scheduled to have parking requirements taken off of them.

Motion by B. Bossio to accept the Findings of Fact, second by J. Rockis. Motion carried unanimously.

Motion by B. Bossio to approve the request with the staff conditions, second by J. Rockis. Motion carried unanimously.

2. **V05-09 / Morlino / 2105 University Avenue:** Request by Bill Morlino for variance approval from the *Table 2, Residential Development Standards* for property located at 2105 University Avenue. Tax Map #20 Parcel #130; a B-1, Neighborhood Business District

J. Wood read the staff report stating that Mr. Morlino would like to demolish a 1920's nonconforming structure located at the corner of University Avenue and Second Street; and rebuild a new structure in its place. For the new structure, the applicant needs a side and rear yard variance, as well as a variance for minimum lot size. The required side yard is ten feet in the B-1 District. The applicant is proposing a one-foot variance on the western side of the structure and a 6.05-foot variance on the

opposing side. The required rear yard setback is 25 feet in the B-1 District. The applicant is proposing a nine-foot setback, a variance of 16 feet. Also, the required lot size for six two-bedroom units is 5,400 square feet. The applicant has 3,980.81 square feet of property.

J. Wood declared that the lot coverage is approximately 31%. No further variances are needed. The current structure has a rear yard setback of 2.5 feet, a front yard setback of 39 feet, a western side yard setback of 17.42 feet and an eastern, facing University Avenue, of 3.83 feet. The following table is designed to aid in fact finding.

<b>STANDARD</b>	<b>REQUIRED</b>	<b>PROPOSED</b>	<b>EXISTING</b>	<b>VARIANCE</b>
Minimum Lot Size	6 2-bedroom units – 5,400 sq. ft.	3,980.81 sq. ft.	Nonconforming 1900 sq. ft.	1419.19 sq. ft.
Rear Yard	25 ft.	9 ft.	2.5 ft.	16.ft.
Side (West)	10 ft.	9 ft.	17.42 ft.	1 ft.
Side (East)	10 ft.	3.95 ft.	3.83 ft.	6.05 ft.
Front	25 ft.	32.9 ft.	32.9 ft.	None
Lot Coverage	35% maximum	31%	26%	None

Although the dwelling is addressed on University Avenue, the ordinance states that the front lot line, for a corner lot, is the narrowest street frontage. Therefore, Second Street would actually be the front of the property.

J. Wood read that Mr. Morlino has stated that the existing structure has historically had no structures parking area. Currently, the nonconforming structure is registered as two apartments with one six-bedroom and one one-bedroom. The parking requirement is three spaces. The proposal is for six two-bedroom units, which requires nine parking spaces. Therefore, the applicant only has to provide six parking spaces. If approved, the project would have to go through Technical Review. The applicant is currently checking with BFI for dumpster placement.

J. Wood advised that in February 2002, the Board approved variances for David Kelly, for three substandard parcels that were deficient in size by 2,000 square feet per parcel, at 717 Grant Avenue. On one of the parcels, Mr. Kelly was approved to locate a duplex two feet from one side lot line ( a variance of three feet) and eight feet from the rear lot line (a variance of twelve feet) in order to move the structure to a location that would avoid an existing sewer line. Antonio Sellaro, in September 2002, was approved for a variance from the front and rear setbacks at 712 Grant Avenue. The applicant was approved to locate a structure three feet from the rear line at one corner of the building. Jim Rockis received approval in June 2004 to develop 14 one-bedroom dwelling units with 18 off-street parking spaces on the property located at 2126 and 2134 University Avenue. Since the development as proposed did not meet the setback and lot area requirements, the following variances were required: front yard, 19 feet; side yard, 3 feet; and lot area, 1,091 square feet. Bill Bjorkman, in February 2003, was approved for a front yard setback of 16 feet, a nine foot variance, at 2577-2585 University Avenue.

J. Wood explained that the Board of Zoning Appeals must determine whether the proposed request meets the standard criteria for a variance. Staff believes the request is reasonable and commends Mr. Morlino in attempting to improve his property. Staff added to Finding of Fact #1 “adjacent properties

are utilized as multi-family dwellings; the applicant will improve the area with a new structure; and that the size of the parcel inhibits the applicant from building a structure that is financially feasible.”

J. Wood added that the site plan, in today, shows an alley behind the property that is not a City alley; it may be a private drive instead. The parking stalls shown are 20’ long, but only 18’ are needed. He has 4’ behind them, so with 6’ plus the width of the alley, there should be plenty of room for backing into the stalls.

Bill Morlino, applicant, reiterated the staff report and added that he also owns the “alley”.

K. Leyden asked for public comments.

Joe Panico clarified that Sunnyside Up recommends a higher density than the current zoning.

K. Leyden asked for public comments. There being none, the public portion was closed.

K. Leyden asked for further public comments. There being none, the public portion was closed.

N. Iannone asked about landscaping along University Avenue.

J. Wood responded that landscaping is required only around parking areas.

Motion by B. Bossio to approve the Findings of Fact as amended by staff, second by J. Rockis.  
Motion carried unanimously.

Motion by M. Furfari to approve the request, second by N. Iannone. Motion carried unanimously.

- 3. CU05-15 / LAI / 400 Forest Avenue:** Request by LAI Architecture for conditional use approval for a multi-family structure in an R-2 District at 400 Forest Avenue. Tax Map #29, Parcel #72; an R-2, Single and Two-family Residential District.

J. Wood read the staff report stating that the applicant is requesting a conditional use for a multi-family structure in an R-2 District at 400 Forest Avenue. The current structure, now vacant, originally was a three unit multi-family dwelling that has fallen into disrepair and been ordered to be removed. Table 11 of the Zoning Ordinance lists “Multi-family Dwellings” as a Conditional Use in the R-2 District.

J. Wood stated that Article 12, Off-street Parking and Loading Regulations of the Zoning Ordinance requires that each two-bedroom unit have 1.5 parking spaces and three-bedroom units have two parking spaces. The request is for four 2-bedroom units and one 3-bedroom unit. Therefore, the parking requirement is eight spaces. The current site plan indicates eight spaces, including one handicap, two accessible from Forest Avenue and six accessible from Baird.

J. Wood reported that, after further investigation with the Code Enforcement Department, it has been determined that this structure was registered as a vacant single-family dwelling on December 19, 2003, from the previous owner. Prior to that registration, it was shown as a three-unit building from March 1980. This structure was ordered repaired or razed by the Code Enforcement Department. According to the Rental Secretary, the surrounding properties are largely registered rentals ranging

from single-family houses to a quadraplex. A majority of the structures are triplexes. Please see the map for the breakdown.

J. Wood clarified that with the current proposal, the property owners have also applied for variances from the following: two side yard setbacks, front yard setback. Minimum lot size, minimum aisled width, and lot coverage. The applicant's variance requests are the following case.

J. Wood advised that since the surrounding neighborhood is in transition to a multi-family area, staff recommends that the application for multi-family be approved. The Planning Commission approved the plan with the condition that the parking be rearranged to avoid conflict the dumpster pad. The applicant has found a solution to this problem that seems feasible to staff. He intends to switch the position of the handicapped accessible stall with one of the regular stalls.

J. Wood added that the area is in dire need of new structures to bring it back from the brink of decay. Litter, boarded up windows and broken glass are fairly characteristic of this street, and a new, fresh building might help reverse the trend. The architectural style is visually interesting and of a quality significantly beyond the typical vinyl-sided box one might expect in a less-sensitive rehab.

J. Wood explained that it is the Board of Zoning Appeals duty to determine whether the proposed conditional use meets the goals and objectives of the Comprehensive Plan and the criteria for conditional uses. The Board of Zoning Appeals must determine whether the proposed request meets the standard criteria for a variance. Staff and the Planning Commission both recommend approval and staff believes the applicant's responses to the findings of fact are acceptable as written.

#### **NEW BUSINESS:**

4. **V05-12 / LAI / 400 Forest Avenue:** Request by LAI Architecture for variance approval from the Table 2, Residential Development Standards for property located at 400 Forest Avenue. Tax Map #29, Parcel #72; an R-2, Single and Two-family Residential District.

J. Wood read the staff report stating that the applicant is currently requesting a conditional use for a multi-family structure in an R-2 District at 400 Forest Avenue. The conditional use request is for four 2-bedroom units and one 3-bedroom unit. The variance requests encompass two side yard variances, front yard variance, lot coverage, and aisle width. Below is a chart that outlines the variances requested.

	<b>Required</b>	<b>Existing</b>	<b>Proposed</b>	<b>Variance</b>
<b>Front</b>	25'	0	0	25'
<b>Side (west)</b>	10'	3'4"	0	10'
<b>Side (east)</b>	10'	40'9"	0	10'
<b>Rear</b>	25"	49'6" to 8'	54'8" to 0	0 to 25'
<b>Minimum lot Size</b>	7,400 sq. ft.	6,045 sq. ft.	6,045 sq. ft.	1,355 sq. ft.
<b>Lot coverage</b>	35%		45%	10%
<b>Aisle width</b>		0		

J. Wood explained that the Board of Zoning Appeals must determine whether the proposed request meets the standard criteria for a variance. Staff and the Planning Commission both recommend approval. An argument has been made by a concerned citizen and former Board of Zoning Appeals

member that the project will cause a negative impact on safety from fire and panic, due to the fact that the streets used to access the site are extremely narrow and crowded. Thus, any intensification of uses in the vicinity would cause more cars to be parked on the street (from folks visiting the project's tenants), and thus would make it all the more difficult for emergency and service vehicles to access the site. Having recently driven down Baird Street in a double-cab pickup truck, I can report that this road is very difficult to access for even standard sized passenger vehicles. There is no adequate turn-around at the end of the street, which terminates approximately 100 feet past the subject property, and it is so narrow that it is difficult to imagine being able to get a fire truck or a garbage truck down that street. I had to back my vehicle all the way out of Baird, until I got to Forest, after trying unsuccessfully two to three times to turn it around on Baird. Thus, having an adequately sized and well-designed off-street parking area for new growth is extremely important. There are some small issues with respect to the parking lot design that remain to be resolved, such as the approach angle of a car on one space, and the use of unopened city right-of-way as aisle space for another stall.

J. Wood advised that whether or not a project, even if well-designed, should still be denied based on the potential negative impact that hypothetical "visitors" to the property might impose on overall safety, is a philosophical question that should be debated in reference to Finding of Fact number 3. Staff believes the BZA should rewrite the answer to Finding of Fact #1 to state that the property's odd shape and size make it difficult to rebuild a new structure. If you look at the existing site plan, the applicant has indicated the required setbacks if a new conforming structure were to be built. The dwelling could have an approximately 1,100 square foot footprint. Staff offers no opinion on Finding of Fact #3. The issue seems fairly debatable, and thus the applicant's response and/or evidence submitted during the hearing should determine the answer.

J. Wood noted that the new plan resolves the issues with the parking lot design. The Board of Zoning Appeals has twelve Findings of Fact to consider; eight for the conditional use and four for the variances.

Derek Hudson, representing LAI, reiterated the staff report and noted neighborhood photographs and other items included in the packet.

B. Bossio asked about the existing home.

Mr. Hudson answered that it was demolished today.

Colin Wattlesworth, property co-owner,

B. Bossio noted that the City had to bring a court case for the demolition; if the BZA issues a conditional use, what assurance is there for compliance?

Marie Howland, property co-owner, replied that when they bought the property in March, the seller did not tell them it was under a condemnation order. She is a city planner by profession and said that they would act responsibly.

K. Leyden asked for public comments.

Frank Ferrell, 26 Outlook Street, asked for the lot size.

J. Wood responded that it is 6,045 square feet with 85' of frontage along Forest Avenue and 85' deep.

Mr. Ferrell asked if it will be apartments for college students.

J. Wood replied that there will be four 2-bedroom and one 3-bedroom units.

Mr. Ferrell stated that he has no objection to three or possibly even four apartments but that he is concerned about the size of the building and the impact on traffic. He discussed the Findings of Fact for the variances.

K. Leyden asked for further public comments. There being none, the public portion was closed.

Mr. Wattlesworth answered that WVU wants to have 40,000 students and increased density is inevitable.

K. Leyden noted that R-2 zoning means duplexes but the existing house was a three unit. structure.

J. Rockis questioned if they would consider scaling the project down.

Mr. Wattlesworth answered that he would not be in favor of that as it would not be cost effective.

J. Rockis stated that it is not the BZA's job to grant variances or conditional use for you to make a profit.

Mr. Wattlesworth remarked that the new zoning ordinance would increase the lot coverage.

Ms. Howland mentioned that, as a city planner, the object is to move more people out of their cars and able to walk downtown and to the campus.

K. Leyden asked how long it would take to walk downtown and if there are sidewalks.

J. Wood replied it would take about one minute to walk, it is right around the corner, and there are sidewalks.

J. Rockis indicated that since they did not enforce parking thirty or forty years ago, we still have a parking problem.

Ms. Howland said that there is no easy solution; get as much parking as you can squeeze in, but you want people downtown walking to these places.

J. Wood asked what it would do to lose a two-bedroom unit.

Ms. Howland responded that she didn't know; we would have to look at it.

Mr. Hudson, in rebuttal, stated that IBC codes will be followed, all required parking is on site, they have no control over visitors or traffic congestion, there is egress from the back and front of the building.

J. Rockis asked Mr. Hudson to explain the differences between density and congestion.

Mr. Hudson answered that congestion is chaotic; density is an ordered situation, enough parking spaces reduce congestion.

Mr. Ferrell remarked that there is another alternative; to go to court.

B. Bossio asked if there is a process in place for stoppage when there are Code Enforcement problems.

J. Wood replied that, by razing the structure, that problem has been removed. Since the code issue is unrelated to the zoning ordinance, it cannot be taken into consideration for a conditional use permit. It needs to be based on the facts presented in the case. As for future construction on that site, we can put an immediate stop work order on the project if it is not complying with any condition.

B. Bossio stated they are not here to make money for people. If the alley is to be annulled, how long would the process take?

J. Wood responded that the process should only take a couple of months and then the building could be shifted so there would be no zero setback.

N. Iannone asserted that they can't blame the congestion on the building; it needs to be placed on the location.

J. Wood remarked that everyone else there is nonconforming.

J. Rockis noted that in an R-2 District, they are entitled to six bedrooms in a duplex, not the eleven requested.

After consultation with Mr. Wattlesworth, motion by B. Bossio to table both requests as requested by the applicant, second by N. Iannone. Motion carried unanimously.

5. **CU05-20 / Jenkins / 355 Mansion Avenue:** Request by Richard Jenkins for conditional use approval to begin a home occupation at 355 Mansion Avenue. Tax Map #21, Parcel #110; an R-1A, Single-family Residential District.

J. Wood presented the staff report stating that Mr. Jenkins would like approval to begin a home-based business, *Entrees on Trays*, a three-step operation that includes: call, pick-up, and deliver. Mr. Jenkins has stated that nearly all contact will be via telephone from the restaurant and then transferring the data to the driver.

J. Wood stated that the business works as follows: A customer calls a restaurant and makes an order for delivery. The restaurant calls Mr. Jenkins with the information. Mr. Jenkins then calls and dispatches a driver to pick up the food from the restaurant and deliver it to the customer. No drivers are stationed at the Mansion Avenue residence. The residence just serves as a telephone liaison point. The hours of operation are 6 days per week from 5:00 PM to 9:00 PM.



J. Wood explained that the business will occupy less than 25% of the floor area of the structure and will not require internal or external alterations. The applicant has stated that there will be one person (driver) per month visiting his dwelling on a regular basis for routine paperwork, pick-up menus, and to develop a schedule. He also has added that all meetings could be scheduled off of his premises if necessary. The applicant has also provided a letter for the property owner giving permission to begin the proposed home based business.

J. Wood clarified that staff believes that the application meets all of the criteria for home occupation approval and recommends approval, as it will not adversely affect adjacent properties. Staff believes that the business operation will not change the residential character of the neighborhood.

Richard Jenkins, applicant, briefly gave some background information.

K. Leyden asked for public comments. There being none, the public portion was closed.

Motion to accept the Findings of Fact as amended by staff and to approve the request by B. Bossio, second by J. Rockis. Motion carried unanimously.

**6. CU05-19 / Alpha Rho Alumni Corporation / 670 North High Street:** Request by Alpha Rho Alumni Corporation for conditional use approval for the construction of a fraternity house in the O-I District at 670 North High Street. Tax Map #26, Parcels #149-150; an O-I, Office and Institutional District.

J. Wood read the staff report stating that Alpha Rho Alumni Corporation would like to construct a new fraternity house at 670 North High Street. Although this is a site of a former fraternity house that was demolished in March of 2005, unless the proposed structure is built in the exact same footprint, conditional use approval is required.

J. Wood explained that the proposed plan calls for 18 two-bedroom units plus a living area for the house director. The setback requirements are 15 feet from the front property line, 5 feet from each side property line, and 8 feet from the rear property line. The proposed structure meets these criteria.

J. Wood reported that there will also be an 18-foot driveway that leads to underground parking. The driveway is accessed from High Street. According to the ordinance, buildings permitted by a conditional use cannot exceed a total of fifty percent (50%) lot coverage. The applicant is proposing a 44.4% lot coverage. The previous fraternity house did not provide parking. The proposed structure has a garage on the basement floor containing fourteen (14) spaces. The ordinance states that for group housing facilities, one (1) space must be provide for each three (3) persons. Therefore, the applicant is required to provide at least thirteen (13) parking spaces.

J. Wood explained that the Board of Zoning Appeals will concurrently review this conditional use request, as well as a variance request for a freestanding temporary sign on October 19, 2005. If approved by the Board of Zoning Appeals, the applicant will be required to submit a site plan application and schedule an appointment for Technical Review with the Planning Department.

J. Wood advised that it is staff's opinion that an approval of the request will not adversely affect public interest. It is the Planning Commission's duty to determine whether the proposed conditional use meets the goals and objectives of the Comprehensive Plan and the criteria for conditional uses.

J. Wood summarized a letter from West Virginia University stating that they do not have any concerns with this project. Staff amended the Findings of Fact by adding to #1, “the new structure contains parking while the previous structure did not.”; to #4, “while the proposed structure does exceed the number of beds in the previous dwelling but all *Table 2 Residential Standards* requirements are being met.”; and to #8, “The new dwelling has exceptional architectural characteristics and may inspire other organizations to upgrade their facilities.”

William Brewer, President, stated that they think this is a large plus for the community and the university. He presented a rendering of the proposed structure.

K. Leyden asked for public comments. There being none, the public portion was closed.

Motion to accept the Findings of Fact as amended by staff and to approve the request by B. Bossio, second by J. Rockis. Motion carried unanimously.

- 7. V05-11 / Alpha Rho Alumni Corporation / 670 North High Street:** Request by Alpha Rho Alumni Corporation for a free-standing sign in excess of twelve square feet in the B-4 District at 456 Spruce Street. Tax Map #26, Parcels #248, 249, & 262; a B-4, General Business District.

J. Wood read the staff report stating that Alpha Rho Alumni Corporation would like to place a temporary construction sign on a proposed site for a new fraternity house at 670 North High Street. They intend to remove the sign once the new fraternity is built.

J. Wood explained that, according to the zoning ordinance, §14.2, N, Sign Restrictions in an O-I District, specifies that signs must be mounted flat against the wall on a principal building, and that no other signs, except for directional signs or information signs will be permitted on site. The proposed sign will be less than 100 square feet in size, smaller than the permitted 200 square feet. The previous fraternity house has been razed to make way for a new structure, which the Board just reviewed as a conditional use. Therefore, the proposed sign cannot yet be mounted to a principal structure.

J. Wood advised that staff’s opinion is that an approval of the request will not adversely affect public interest. It is the Board of Zoning Appeals duty to determine whether the proposed variance meets the goals and objectives of the Comprehensive Plan. Staff recommends the proposed sign with the following additions:

1. To minimize sign ground clutter, other contractor or construction signs must be placed on the proposed sign or sign apparatus.
2. The proposed sign be removed by June 30, 2006, and/or removed before a sign permit is issued for the proposed structure.

Staff asked the BZA to clarify in #1 “that the zoning district will not change from the present O-I when the new ordinance and map are adopted.” and to clearly state in #2 “that all property to the west is owned and operated by West Virginia University, which is exempt from the zoning ordinance

William Brewer, applicant,  
NEW TAPE DID NOT START UNTIL THIS POINT.

K. Leyden asked for public comments. There being none, the public portion was closed.

Motion to accept the Findings of Fact as amended by staff and to approve the request by B. Bossio, second by J. Rockis. Motion carried unanimously.

8. **V05-13 / Culton Construction / Eastern Avenue:** Request by Culton Construction for variance approval from the *Table 2, Residential Development Standards* for property located off Eastern Avenue (The French Quarters). Tax Map #55 old Parcels #31 and part of #32; an R-1A, Single-family Residential District. (This was withdrawn by the applicant.)
9. **V05-14 / Duffer / Conn Street:** Request by George Duffer for variance approval from the *Table 2, Residential Development Standards* for property located on Conn Street. Tax Map #36 Parcel #264; an R-1A, Single-family residential District.

J. Wood read the staff report stating that the applicant is seeking a variance from the *Table 2, Residential Development Standards*. Mr. Duffer would like to build a single-family dwelling within 17'3" of the front property boundary on Conn Street, a variance of 7.75'.

J. Wood stated that the applicant received minor subdivision approval from the Planning Commission to add 512.88 square feet to this parcel by deducting it from parcel #265. This resulted in parcel #264 having 4,424.87 square feet of property, exceeding the minimum 4,000 square foot requirement in an R-1A District. If the parcels had remained separate, parcel #264 would have been nonconforming with respect to lot size, and there likely still would have been a need for variances, due to the presence of a natural spring on the property.

J. Wood clarified that by granting this variance, no additional set back or lot coverage issues will be created. In July 1994, the Board approved a 15' front yard setback for this property, a variance of 10', but the variance request was never acted upon and thus expired. Later that property owner sold the parcel to Habitat for Humanity, who also declined to build upon it. Habitat later sold it to Mr. Duffer. During the previous variance hearing, the Board concluded that the lot is shallow, more than 50% of the properties in the area have similar variance, a single-family dwelling is within the characteristic of the neighborhood, and that it would improve the marketable value of the neighborhood.

J. Wood advised that staff believes the property owner has done his part to reduce nonconformity of his parcel. Despite those efforts, some variance is still needed due to the unusual shape of the parcel. Given those two factors, staff believes the requested variance is warranted in this case and recommends approval. Granting this variance does not necessarily mean that the parcel is buildable. There are, apparently, soil and wetness issues on the site that would have to be overcome in order to build anything on it; however, that issue is not related to the appropriateness of a variance. Other agencies will address that issue during the permitting phase. The Board of Zoning Appeals must determine whether the proposed request meets the standard criteria for a variance. Staff added to Finding #1, "although the applicant has stated that the variance is also for a rear yard setback, the ordinance states that one-half of an alley abutting the rear lot line may be included in the required rear yard. Thus giving the applicant the required 20 feet." and added to #2, "other properties in this vicinity do not meet the required minimum lot size."

George Duffer, applicant, reiterated the staff report.

K. Leyden asked for public comments. There being none, the public portion was closed.

Motion to accept the Findings of Fact as amended by staff and to approve the request by J. Rockis, second by B. Bossio. Motion carried unanimously.

**OTHER BUSINESS:**

**Public Comments:** NONE.

**Staff Comments:** J. Wood gave a reminder of the WV Planning Association Annual Conference and gave the web site for registration forms and information.

**ADJOURNMENT**